

March 23, 2001

RECEIVED

DOCKET FILE COPY ORIGINAL

MAR 26 2001

FCC MAIL ROOM

97-21

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB-204
Washington, DC 20024

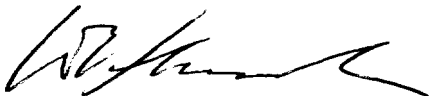
Ref.: Appeal of Universal Service Administrator
decision with respect to St. Patrick's Academy

Dear Ms. Salas:

Attached are an original and four copies of an appeal by E-Rate Central, the E-rate coordinator for the New York State Education Department, on behalf of St. Patrick's Academy.

A receipt copy is also enclosed. Please stamp it received and return it to us in the self-addressed stamped envelope.

Sincerely,



Winston E. Himsworth

Attachments

/abm

No. of Copies rec'd 0+4
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Original
RECEIVED
MAR 26 2001
FCC MAIL ROOM

In the matter of: _____)
Request for Review by _____)
St. Patrick's Academy _____)
of Decision of Universal Service Administrator _____)

Docket Nos. 97-21 and 96-45

Ref.: Rejected Form 471 Application: Program Year Three (2000-2001)
Entity Number: 13852

In this appeal, E-Rate Central, the E-rate coordinator for the New York State Education Department, asks the Commission to instruct the Schools and Libraries Division ("SLD") to accept, as timely, a Form 471 application for Program Year Three ("PY3") from St. Patrick's Academy that the SLD had rejected for a failure to meet Minimum Processing Standards. More broadly, we ask the Commission to prescribe a process to permit any E-rate applicant to petition the SLD to reconsider any rejected funding request that had been denied as a result of policies subsequently reversed by the SLD or the Commission.

Background:

St. Patrick's Academy's Form 471 for PY3 was filed by mail with the SLD in January 2000 within the application window period. The application included a single Block 4 Worksheet A, listing St. Patrick's Academy as the sole entity. The application also included three Block 5 funding requests for telecommunications and Internet access services. St. Patrick's application was complete with the exception of a simple oversight; the Item 22 reference to the one and only discount worksheet was inadvertently left blank on each of the Block 5 requests. The correct discount rate, however, was properly entered in Column J of the Item 23 calculations for each Block 5.

In a letter dated February 16, 2000 (attached), the SLD notified St. Patrick's Academy that its entire Form 471 did not meet Minimum Processing Standards and could not be processed. The SLD letter encouraged St. Patrick's to respond "by resubmitting a correct Form 471." St. Patrick's Academy responded as suggested, but was subsequently notified that its application had been received outside the window and would not be funded.

It is important to note that the SLD's letter did not explicitly state that St. Patrick's application was being rejected. Instead, it offered the seemingly contradictory advice to resubmit the Form 471, but to do so before January 19. This was an obvious

impossibility at the time of the SLD's letter. Although the SLD's letter discussed an appeal option, St. Patrick's realized that it had indeed left Item 22 blank and, therefore, did not appeal the SLD's determination that the original application did not meet Minimum Processing Standards. In hindsight, St. Patrick's should have appealed anyway.

On February 27, 2001, the Commission released an appeal decision (FCC 01-73) in the case of Naperville Community Unit School District 203 ("Naperville") granting a Request for Review for a PY3 Form 471 that had been similarly rejected by the SLD under its Minimum Processing Standards for missing Item 22 references. In its decision, the Commission found that the "SLD reasonably could have easily discerned the information omitted in Item 22" and that "The administrative cost of accepting Naperville's application under these facts are minimal and are outweighed by the objective of ensuring that schools and libraries benefit from the schools and libraries universal service support mechanism as contemplated by the statute."

Moreover, the Commission noted that it was aware of similar issues pending before the SLD and directed the SLD and Common Carrier Bureau "to resolve these matters consistent with the underlying rationale of this Order." The following day, the Common Carrier Bureau released a decision (DA 01-516) remanding six "factually similar" appeals back to the SLD for review.

On the basis of these decisions, the SLD is charged with reviewing not only the appeals remanded by the FCC, but a similar set of PY3 appeals submitted directly to the SLD. Under the decision guidelines, we expect that many of these appeals will result in previously rejected applications being accepted for PY3 funding. It is our understanding, however, that this change in policy with regard to Minimum Processing Standards will apply only to those applicants who filed timely appeals after the rejection of their Form 471 applications. No plans have been made to address the similar rejection of a larger number of PY3 Form 471s by applicants, such as St. Patrick's Academy, who did not appeal.

Policy Changes Raise Broader Issue of Fairness and Process:

This will not be the first time that a change of policy, by either the SLD or FCC, has resulted in the acceptance of previously rejected funding requests by a subset of affected applicants.¹ Applicants, who had appealed the policy, won. Applicants, who accepted the SLD's original determination and did not appeal, lost.

We believe that applying favorable policy changes retroactively, only to applicants who had appealed, is essentially unfair to those applicants who did not.

¹ Examples include:

- (a) Eligibility of routers with remote access and WAN capability (DA 99-2140)
- (b) Hub/servers/routers as Internet access service components (FCC 99-216)
- (c) PY1 reclassification of Priority One services to Priority Two (FCC 99-298)

In addition to the issue of fairness, we believe that the selective application of policy revisions only to appellants is placing an increasing administrative burden on both the SLD and the FCC. Unless the process is changed, and the SLD is permitted to retroactively provide relief to applicants affected by FCC decisions, applicants have every incentive to appeal any and all unfavorable SLD decisions in the hope of an eventual policy reversal. Indeed, numerous state E-rate coordinators routinely urge applicants to appeal all SLD denials or rejections. A process that encourages many and often redundant appeals is highly inefficient and has already created a daunting backlog of appeals at both the SLD and the FCC.

From discussions with the SLD, we understand that one potential problem with applying policy revisions retroactively is the ability to identify affected applicants. Applicants with pending appeals are obviously easy to identify; the identification of those who did not appeal could be more difficult.

One solution would be to establish a 45-60 day window period following the release of a major FCC policy revision during which an affected applicant could petition the SLD for a review of the original decision. Two conditions are suggested:

1. A window provision for retroactive relief should not be automatically granted after every FCC E-rate decision, but should be established only in specific instances involving systemic policy changes.
2. A petition for review should be accepted only when the applicant can clearly document that the Administrator's decision would be affected by the revised policy.

Note that in the specific instance of this appeal, both conditions would be easily satisfied.² In particular:

1. The rejection of applications for missing Item 22 data was the cause of a significant number of Form 471s being returned to applicants in PY3. As a result of the Commission decisions on this matter, it is expected that the SLD will reinstate a number of applications under appeal. For PY4 application processing, it is understood that the SLD may revise its Minimum Processing Standards to eliminate Item 22 as a source of automatic rejection.
2. Documentation is clearly provided in the SLD's letter of February 16, 2000 (attached), to St. Patrick's Academy that stated:
 - **The Form 471 Entity/Entites (sic) Receiving this Service (Block 5, Item 22) do not correspond with a Worksheet provided to the SLD in this application.**

² Note also that this appeal is being submitted within 30 days of the FCC's Naperville decision, within the FCC's normal appeal window and well within the recommended petition window.

Appeal request:

By this appeal, we ask the Commission:

1. Generally: To adopt a procedure whereby major E-rate policy revisions made by the FCC can be applied retroactively to affected applicants who did not initially appeal a SLD decision issued as a result of the original policy.
2. Specifically: To instruct the SLD to review St. Patrick's Academy's original and timely filed Form 471 under the same terms of other PY3 applications being addressed as a result of the Commission's Naperville decision.

Respectfully submitted,

By: 

Winston E. Himsworth

E-Rate Central

1196 Prospect Avenue

Westbury, NY 11590

516-832-2881

On behalf of:

St. Patrick's Academy

80 Woodland Avenue

Catskill, NY 12414

518-943-2952

Dated: March 23, 2001

Attachment: SLD letter to St. Patrick's Academy dated February 16, 2000



UNIVERSAL SERVICE
ADMINISTRATIVE CO.

Schools and Libraries
Division

P.O. Box 7026
Lawrence, KS 66044-7026
or
3833 Greenway Dr.
Lawrence, KS 66046

February 16, 2000

NCS Bar Code: NEC.471.01-17-00.04801276

Funding Year: 3

KATHLEEN HINTZ
ST. PATRICK'S ACADEMY
80 WOODLAND AVE.
CATSKILL, NY 12414

Dear Applicant:

This letter is your notification that the entire FCC Form 471, *Services Ordered and Certification Form*, you submitted did not meet Minimum Processing Standards and cannot be processed.

Your Form 471 is enclosed with this letter, which means that the Schools and Libraries Division (SLD) could not process any portion of it. To be considered for E-rate discounts, your application must be corrected and resubmitted. To be considered within the Form 471 filing window for Fund Year 3, your new or corrected application must be received by 11:59 P.M., January 19, 2000. The newly submitted Form must also meet Minimum Processing Standards. Here is an explanation of the specific reason(s) your Form 471 did not meet the Minimum Processing Standards:

- **The Form 471 Entity/Entites Receiving this Service (Block 5, Item 22) do not correspond with a Worksheet provided to the SLD in this application.**

We encourage you to respond to this letter as soon as you are able, by resubmitting a corrected Form 471. We also encourage you to visit the SLD Web Site if you have Internet access, at www.sl.universalservice.org. The Web Site provides Minimum Processing Standards, forms, and guidance to complete your Form 471. Additional assistance is available by calling the Client Service Bureau at 1-888-203-8100 and by e-mail at question@universalservice.org. Client Service Representatives are available from 8:00 a.m. to 8:00 p.m. EST, Monday through Friday.

If you disagree with this decision and you wish to appeal to the SLD, your appeal must be made in writing and received by us within 30 days of issuance of this letter. In your letter of appeal, please include: correct contact information for the appellant, information on the decision you are appealing, the specific Funding Request in question, a copy of this letter and an original authorized signature. Appeals sent by fax, e-mail or phone call cannot be processed. Please mail your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125-Correspondence Unit, 80 South Jefferson Road,

Whippany, NJ 07981. You may also call our Client Service Bureau at 888-203-8100. While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC), by sending your notice of appeal to: FCC, Office of the Secretary, 445 12th Street, SW; 12th Street Lobby, SW; Washington, D.C. 20554

Schools and Libraries Division

Universal Service Administrative Company

Enclosure:

(1) Form 471